IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11213 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHAMAD VASIM ALIAS VASSIM NADIR HUSEN SHAIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11213 of 2003

MR AR SHAIKH for Petitioner No. 1

MR RM CHAUHAN Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 17/09/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed against him by the Police Commissioner, Surat city on

11.12.2002 under the exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short).

The detaining authority in passing the order relied upon two facts to reach to subjective satisfaction, firstly, four offences registered against the petitioner under sec. 379 of IPC and in-camera statements of two witnesses recorded by the proposing authority on 15.11.2002 revealing the incidents of 21.9.2002 and 30.9.2002. The detaining authority verified the statements on 7.12.2002 and order came to be passed on 11.12.2002. The witness revealed the incident that on suspicion that the witnesses were offering the information to the police about the illegal activity of the petitioner, the witness was beaten and public order was disturbed.

Ld. advocate Ms. Datta for Mr AR Shaikh for the petitioner and Ld. AGP Mr. Chauhan were heard at length.

Out of many contentions raised and controverted by ld. AGP, it appears that this petition can be disposed of on the ground that the petitioner was in judicial custody in the last offence registered against him when the order of detention came to be served upon him. The detaining authority reached to the subjective satisfaction that at any time, the petitioner was likely to be released on bail and was likely to continue his illegal activity. The grounds reveal that the detaining authority has not taken into consideration the cogent material to reach to this subjective satisfaction. Therefore, the facts of this case are squarely covered by a decision of the Apex court in the matter of Amtrilal & Ors., vs. Union Government, through Secretary, Ministry of Finance & Ors., as reported in AIR 2000 SC 3675. The order of detention is required to be quashed on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 11.12.2002 by the Police Commissioner, Surat City, under the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs.

(J.R. VORA, J.)

mandora/